

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

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|-------------------------------|--|-----------------------------|
| UNITED STATES OF AMERICA, )   |  |                             |
| Complainant, )                |  |                             |
| )                             |  |                             |
| v. )                          |  | 8 U.S.C. § 1324a Proceeding |
| )                             |  | Case No. 97A00153           |
| CHELSEA DISTRIBUTORS, INC., ) |  |                             |
| Respondent. )                 |  |                             |

**MARVIN H. MORSE, Administrative Law Judge**

**Appearances: Lisa Fried, Esq., for Complainant.  
Brian Ardizone, pro se**

**FINAL DECISION AND ORDER GRANTING COMPLAINANT'S  
MOTION FOR DEFAULT JUDGMENT  
(February 4, 1998)**

**I. PROCEDURAL HISTORY**

On March 11, 1997, the Immigration and Naturalization Service (INS) served a Notice of Intent to Fine (NIF) on Chelsea Distributors, Inc. (Respondent or Chelsea).

On August 26, 1997, INS filed a Complaint with the Office of the Chief Administrative Hearing Officer (OCAHO).

Count I, the only count of the Complaint, charges Respondent with failure to prepare and/or make available for inspection the employment eligibility verification form (Form I-9) for each of forty-five (45) named individuals, and assesses a civil money penalty of \$450 per violation for a total civil money penalty of \$20,250. Attached to the Complaint as Exhibit B is Respondent's April 1, 1997 request for hearing, by its President, Brian Ardizone.

On August 28, 1997, OCAHO issued a Notice of Hearing (NOH) which transmitted a copy of the Complaint to Respondent. The NOH cautioned that upon failure to file an Answer to the Complaint within thirty (30) days of receipt, "Respondent may be deemed to have waived

his/her right to appear and contest the allegations of the Complaint, and an Administrative Law Judge (ALJ) may enter a judgment by default along with any and all appropriate relief.” The Postal Service certified mail return receipt returned to OCAHO confirms that Respondent received the NOH on August 30, 1997. To date, no Answer to the Complaint has been filed.

On December 2, 1997, INS filed a Motion for Default Judgment. The Motion was served on Respondent on December 2, 1997. Respondent failed to plead or otherwise defend within thirty (30) days of receipt of said Complaint as required by 28 C.F.R. § 68.9(a).

On January 7, 1998, I issued an Order to Show Cause Why Default Judgment Should Not Issue (OSC). The Postal Service return receipt confirms that the Order was received by Respondent on January 10, 1998. To date no response to the OSC has been received.

## **II. DISCUSSION**

### **A. Complainant’s Motion for Default is Granted**

A response is past due. The OSC addressed to Respondent not having been returned, is understood to have been effectively delivered. Accordingly, I find Respondent in default.

Failure of the respondent to file an answer within the time provided shall be deemed to constitute a waiver of his/her right to appear and contest the allegations of the complaint. The Administrative Law Judge may enter a judgment by default.

28 C.F.R. § 68.9(b). The Motion is granted.

## **III. ULTIMATE FINDINGS, CONCLUSIONS AND ORDER**

I have considered the Complaint and subsequent pleadings. For the reasons stated, I find and conclude that:

1. Complainant’s Motion for Default Judgment is granted;
2. As alleged in Count I, the only count of the Complaint, Respondent has failed to prepare and/or make available for inspection the employment eligibility verification form (Form I-9) for forty-five named individuals in violation of 8 U.S.C. § 1324a(a)(1)(B), and shall pay a civil money penalty in the amount of \$20,050;
3. Respondent shall pay an aggregate civil money penalty totaling \$20,050 for the violations listed in Count I, the only count of the Complaint.

This Final Decision and Order Granting Complainant's Motion for Default Judgment is the final action of the judge in accordance with 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. § 68.52(c)(iv). As provided at 28 C.F.R. § 68.53(a)(2), this action shall become the final order of the Attorney General unless, within thirty (30) days from the date of this Final Decision and Order, the Chief Administrative Hearing Officer shall have modified or vacated it. Both administrative and judicial review are available to parties adversely affected. See 8 U.S.C. §§ 1324a(e)(7), (8) and 28 C.F.R. § 68.53(a).

SO ORDERED.

Dated and entered this 4th day of February, 1998.

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Marvin H. Morse  
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the attached Final Decision and Order Granting Complainant's Motion for Default Judgment were mailed first class, and certified mail return receipt requested, as indicated, this 4th day of February, 1998 addressed as follows:

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